

House File 119 - Introduced

HOUSE FILE 119

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 14)

A BILL FOR

1 An Act relating to county attorney duties when representing the
2 department of human services in juvenile court.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.37, subsection 1, Code 2013, is
2 amended to read as follows:

3 1. After a petition has been filed the court shall set
4 a time for an adjudicatory hearing and unless the ~~parties~~
5 persons named in subsection 2 voluntarily appear, shall issue
6 a summons requiring the child to appear before the court at a
7 time and place stated and requiring the person who has custody
8 or control of the child to appear before the court and to bring
9 the child with the person at that time. The summons shall
10 attach a copy of the petition and shall give notification of
11 the right to counsel provided for in section 232.11.

12 Sec. 2. Section 232.71C, subsection 1, Code 2013, is amended
13 to read as follows:

14 1. If, upon completion of an assessment performed under
15 section 232.71B, the department determines that the best
16 interests of the child require juvenile court action, the
17 department shall act appropriately to initiate the action.
18 If at any time during the assessment process the department
19 believes court action is necessary to safeguard a child, the
20 department shall act appropriately to initiate the action. The
21 county attorney shall assist the department ~~as provided under~~
22 ~~section 232.90, subsection 2.~~

23 Sec. 3. Section 232.87, subsection 2, Code 2013, is amended
24 to read as follows:

25 2. A petition may be filed by the department of human
26 services, juvenile court officer, or county attorney. In
27 determining whether a petition is to be filed, the department
28 or a juvenile court officer may consult with the county
29 attorney. If the county attorney declines to file a petition
30 requested by the department or juvenile court officer, the
31 department or juvenile court officer may file the petition
32 pursuant to this section, and may request that the attorney
33 general represent the state in place of the county attorney.

34 Sec. 4. Section 232.88, Code 2013, is amended to read as
35 follows:

1 **232.88 Summons, notice, subpoenas, and service.**

2 After a petition has been filed, the court shall issue and
 3 serve summons, subpoenas, and other process in the same manner
 4 as for adjudicatory hearings in cases of juvenile delinquency
 5 as provided in section 232.37. Reasonable notice shall be
 6 provided to the persons required to be provided notice under
 7 section 232.37, except that notice shall be waived regarding
 8 a person who was notified of the adjudicatory hearing and who
 9 failed to appear. In addition, reasonable notice for any
 10 hearing under this division shall be provided to the department
 11 of human services, and the agency, facility, institution,
 12 or person, including a foster parent, relative, or other
 13 individual providing preadoptive care, with whom a child has
 14 been placed.

15 Sec. 5. Section 232.90, Code 2013, is amended to read as
 16 follows:

17 **232.90 Duties of county attorney.**

18 1. As used in this section, "state" means the general
 19 interest held by the people in the health, safety, welfare, and
 20 protection of all children living in this state.

21 ~~1. 2.~~ The county attorney shall represent the state in
 22 proceedings arising from a petition filed under this division
 23 ~~and shall present evidence in support of the petition.~~ The
 24 county attorney shall be present at proceedings initiated by
 25 petition under this division filed by an intake officer or the
 26 county attorney, or if a party to the proceedings contests the
 27 proceedings, or if the court determines there is a conflict of
 28 interest between the child and the child's parent, guardian, or
 29 custodian or if there are contested issues before the court.

30 ~~2. The county attorney shall represent the department in~~
 31 ~~proceedings arising under this division. However, if there is~~
 32 ~~disagreement between the department and the county attorney~~
 33 ~~regarding the appropriate action to be taken, the department~~
 34 ~~may request to be represented by the attorney general in place~~
 35 ~~of the county attorney.~~

1 3. At the dispositional hearing or any subsequent
2 modification hearing held pursuant to this division, the county
3 attorney shall present to the court evidence regarding the
4 availability, fiscal impact, or fiscal limitations of any
5 placement for the child that is under consideration by the
6 court, if such evidence is provided by the department to the
7 county attorney.

8 4. In any proceeding under this division, the county
9 attorney shall consult with the department to ensure
10 compliance with all applicable state and federal laws regarding
11 permanency.

12 Sec. 6. Section 232.102, subsection 1, paragraph a,
13 unnumbered paragraph 1, Code 2013, is amended to read as
14 follows:

15 After a dispositional hearing and consideration of
16 all information provided by the department regarding the
17 availability, fiscal impact, or fiscal limitations to placement
18 for the child, the court may enter an order transferring the
19 legal custody of the child to one of the following for purposes
20 of placement:

21 Sec. 7. Section 232.104, subsection 1, Code 2011, is amended
22 by adding the following new paragraph:

23 NEW PARAGRAPH. d. If an initial permanency hearing is
24 not timely scheduled by the court, the department may seek
25 assistance of the county attorney in requesting that the court
26 set a timely permanency hearing.

27 Sec. 8. Section 232.111, subsection 1, Code 2013, is amended
28 to read as follows:

29 1. A child's guardian, guardian ad litem, or custodian,
30 the department of human services, a juvenile court officer, or
31 the county attorney may file a petition for termination of the
32 parent-child relationship and parental rights with respect to a
33 child. In determining whether a petition is to be filed, the
34 department or a juvenile court officer may consult with the
35 county attorney. If the county attorney declines to file a

1 petition requested by the department or juvenile court officer,
2 the department or juvenile court officer may file the petition
3 pursuant to this section, and may request that the attorney
4 general represent the state in place of the county attorney.

5 Sec. 9. Section 232.111, subsection 4, paragraph b,
6 subparagraph (3), Code 2013, is amended to read as follows:

7 (3) ~~Custodian~~ Legal custodian of the child.

8 Sec. 10. Section 232.112, subsection 1, Code 2013, is
9 amended to read as follows:

10 1. Persons listed in section 232.111, subsection 4, other
11 than the department of human services, shall be necessary
12 parties to a termination of parent-child relationship
13 proceeding and are entitled to receive notice and an
14 opportunity to be heard, except that notice may be dispensed
15 with in the case of any such person whose name or whereabouts
16 the court determines is unknown and cannot be ascertained by
17 reasonably diligent search. In addition to the persons who are
18 necessary parties who may be parties under section 232.111,
19 notice for any hearing under this division shall be provided to
20 the department of human services, the child's foster parent,
21 an individual providing preadoptive care for the child, or a
22 relative providing care for the child.

23 Sec. 11. Section 232.114, Code 2013, is amended to read as
24 follows:

25 **232.114 Duties of county attorney.**

26 1. As used in this section, "state" means the general
27 interest held by the people in the health, safety, welfare, and
28 protection of all children living in this state.

29 ~~1- 2. Upon the filing of a petition the county attorney~~
30 ~~shall represent the state in all adversary proceedings arising~~
31 ~~under this division and shall present evidence in support of~~
32 ~~the petition.~~

33 ~~2. The county attorney shall represent the department in~~
34 ~~proceedings arising under this division. However, if there is~~
35 ~~disagreement between the department and the county attorney~~

1 ~~regarding the appropriate action to be taken, the department~~
2 ~~may request to be represented by the attorney general in place~~
3 ~~of the county attorney.~~

4 Sec. 12. Section 232.180, Code 2013, is amended to read as
5 follows:

6 **232.180 Duties of county attorney.**

7 1. As used in this section, "state" means the general
8 interest held by the people in the health, safety, welfare, and
9 protection of all children living in this state.

10 2. Upon the filing of a petition and the request of the
11 department, the county attorney shall represent the state in
12 all adversary proceedings arising under this division and shall
13 present evidence in support of the petition as provided under
14 section 232.90.

15 EXPLANATION

16 This bill eliminates the county attorney's duty to represent
17 the department of human services in juvenile court.

18 Code section 232.37 is amended to remove the reference
19 to known parents, guardians, or legal custodians as parties.
20 The Code section continues to provide that unless the known
21 parents, guardians or legal custodians of a child, the child,
22 and the child's guardian ad litem voluntarily appear for an
23 adjudicatory hearing to determine if the child has committed a
24 delinquent act, the court shall issue a summons requiring the
25 child to appear before the court at a time and place stated and
26 requiring the person who has custody or control of the child to
27 appear before the court and to bring the child with the person
28 at the time of the hearing.

29 Code section 232.71C is amended to provide that the county
30 attorney shall assist the department of human services in a
31 child in need of assistance proceeding, but strikes a reference
32 requiring the county attorney to represent the department in
33 such proceedings.

34 Code section 232.87 is amended by adding a provision
35 providing that the department of human services or a juvenile

1 court officer may consult with the county attorney to determine
 2 whether a child in need of assistance petition should be filed.
 3 Under the bill, if the county attorney declines to file such a
 4 petition, the department of human services or juvenile court
 5 officer may file the petition, and request the attorney general
 6 represent the state in place of the county attorney.

7 Code section 232.88 is amended to add the department of human
 8 services to the list of persons or entities required to be
 9 provided notice of a child in need of assistance proceeding.

10 Code section 232.90 is amended to require the county
 11 attorney to represent the state in a child in need of
 12 assistance proceeding and strikes a provision requiring the
 13 county attorney to represent the department of human services
 14 in such a proceeding. The amendment to Code section 232.90
 15 defines "state" to mean the general interest held by the people
 16 in the health, safety, welfare, and protection of all children
 17 living in the state. Code section 232.90 is amended to strike
 18 a provision allowing the attorney general to represent the
 19 department of human services if a dispute arises between the
 20 county attorney and the department of human services in a child
 21 in need of assistance proceeding.

22 Code section 232.90 is also amended to provide that at
 23 a dispositional hearing of a child in need of assistance
 24 proceeding or any subsequent modification, the county attorney
 25 shall present evidence to the court regarding the availability,
 26 fiscal impact, or fiscal limitations of any placement being
 27 considered for the child, if such evidence is provided by the
 28 department of human services to the county attorney. Code
 29 section 232.90 is also amended to require the county attorney
 30 to consult with the department to ensure compliance with all
 31 applicable state and federal laws regarding permanency for a
 32 child adjudicated a child in need of assistance.

33 Code section 232.104 is amended to permit the department of
 34 human services to seek assistance of the county attorney in
 35 setting a timely permanency hearing for a child adjudicated a

1 child in need of assistance.

2 Code section 232.111 is amended to require a petition
3 for termination of parental rights to contain the name and
4 residence of the "legal custodian" of the child. Current law
5 requires the petition for termination of parental rights to
6 contain the name and residence of the "custodian" of the child.

7 Code section 232.111 is also amended by adding a provision
8 providing that the department of human services or a juvenile
9 court officer may consult with the county attorney to determine
10 whether a termination of parental rights petition should be
11 filed. Under the bill, if the county attorney declines to file
12 such a petition, the department of human services or juvenile
13 court officer may file the petition and request the attorney
14 general represent the state in place of the county attorney.

15 Code section 232.112 is amended to strike a provision
16 requiring the department of human services to receive notice
17 and an opportunity to be heard, as a necessary party listed
18 in Code section 232.111, in a termination of parent-child
19 relationship proceeding, except that the department shall be
20 provided notice of such a hearing if acting in a capacity
21 similar to that of a child's foster parent or other person
22 providing care for the child.

23 Code section 232.114 is amended to require a county attorney
24 to represent the state in a termination of parental rights
25 proceeding and strikes a provision requiring a county attorney
26 to represent the department of human services in such a
27 proceeding. The amendment to Code section 232.114 defines
28 "state" to mean the general interest held by the people in the
29 health, safety, welfare, and protection of all children living
30 in the state. The amendment to Code section 232.114 also
31 strikes a provision allowing the attorney general to represent
32 the department of human services if a dispute arises between
33 the county attorney and the department of human services in a
34 termination of parental rights proceeding.

35 Code section 232.180 is amended to require the county

1 attorney to represent the state in a voluntary foster care
2 placement proceeding and strikes a provision requiring the
3 county attorney to represent the department of human services.
4 The amendment to Code section 232.180 defines "state" to mean
5 the general interest held by the people in the health, safety,
6 welfare, and protection of all children living in the state.